

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEMUEL BROWN,

Plaintiff,

Case No. 05-60162

v.

Hon. John Corbett O'Meara

CITY OF DETROIT, *et al.*,

Hon. Virginia M. Morgan

Defendants.

**ORDER GRANTING MOTION TO
CORRECT CLERICAL MISTAKES**

Before the court is Plaintiff's motion to correct clerical mistakes, filed November 29, 2006. On September 11, 2006, Magistrate Judge Morgan issued a report recommending that Plaintiff's complaint be dismissed. The report and recommendation informed the parties that they had ten days to object. The proof of service accompanying the report and recommendation indicated that it was served by electronic means or U.S. Mail on September 11, 2006.

Plaintiff did not timely file objections to the report and recommendation. On October 30, 2006, this court adopted Magistrate Judge Morgan's report and recommendation and entered judgment in favor of Defendants. Plaintiff contends that he did not receive the report and recommendation until October 23, 2006, and that it was postmarked October 20, 2006. Plaintiff attached to his motion a copy of an envelope mailed from the court that was postmarked October 20, 2006. Plaintiff also asserts that he "filed reply back on October 31, 2006" and attaches a receipt indicating that postage in the amount of \$.87 was purchased for a mailing to the court on October 31, 2006. The receipt indicates the document was "mailed November 1, 2006." The court did not, however, receive Plaintiff's objections.

“The common law has long recognized a presumption that an item properly mailed was received by the addressee.” In re Yoder Co., 758 F.2d 1114, 1118 (6th Cir. 1985). However, this presumption may be rebutted by testimony of non-receipt. Id. In light of Plaintiff’s assertion that he did not timely receive the report and recommendation from the court, as well as his documentary evidence, the court finds that the presumption that Plaintiff received the report and recommendation in a timely fashion has been rebutted.

Accordingly, the court will give Plaintiff an opportunity to re-file his objections to the report and recommendation.

IT IS HEREBY ORDERED that Plaintiff’s motion to correct clerical mistakes is GRANTED.

IT IS FURTHER ORDERED that Plaintiff shall file objections to the magistrate’s September 11, 2006 report and recommendation within ten (10) days of the date of this order. Such objections will be considered timely filed if they are placed in the prison mail system for mailing within ten (10) days of the date of this order.¹

s/John Corbett O’Meara
United States District Judge

Dated: May 10, 2007

¹ See Houston v. Lack, 487 U.S. 266, 276 (1988).

I hereby certify that on this date, May 10, 2007, a copy of the foregoing order was served upon Plaintiff by U.S. Mail and upon Defendants' counsel electronically and/or by U.S. Mail.

s/William Barkholz
Case Manager